

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

PATRICK DURAY PORTLEY-EL,)	
)	
Plaintiff,)	
vs.)	NO. CIV-08-160-D
)	
MARY BLEVINS,)	
)	
Defendant.)	

ORDER

Plaintiff, a state prisoner appearing *pro se*, brought this action pursuant to 42 U. S. C. §§ 1983,¹ alleging that Mary Blevins, a Beckham County, Oklahoma deputy court clerk, violated his constitutional rights by purportedly refusing to transmit a habeas corpus petition to the Beckham County sheriff for service of process. The action was filed in the District Court of Beckham County, and Defendant removed the case to this court. Pursuant to 28 U. S. C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Robert E. Bacharach. Plaintiff filed two motions for default judgment.² On January 12, 2009, the Magistrate Judge filed a Report and Recommendation [Doc. No. 39] in which he recommended that both motions be denied. Because Plaintiff timely objected to the Report and Recommendation, the matter is reviewed *de novo*.

As the Magistrate Judge correctly noted, the record in this case reflects that, contrary to Plaintiff's contentions, Mary Blevins timely filed a response to the complaint. Although the docket sheet in the state court action does not reflect that Plaintiff filed proof of service of process in that case, defendant Blevins removed the action to this court and filed an entry of appearance on

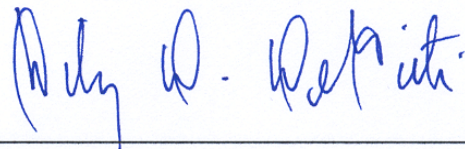
¹Plaintiff also asserts state tort claims against Defendant.

²Although Plaintiff labeled these motions as "petitions" for default judgment, the Court construes them as motions.

February 15, 2008. As the Magistrate Judge correctly noted, a voluntary entry of appearance is “equivalent to service.” Okla. Stat. tit. 12 § 2004(C)(5). Accordingly, service is deemed to have occurred on February 15, 2008. Defendant Blevins filed her Answer to the Complaint on February 25, 2008 [Doc. No. 5], tens days after the entry of appearance. The Answer was timely filed, and Defendant Blevins is not in default. The Magistrate Judge correctly concluded that the motions for default judgment should be denied.

In his objection to the Report and Recommendation, Plaintiff offers no persuasive argument or authority which contradicts the record in this case. Having reviewed the Report and Recommendation and the record in this case as well as Plaintiff’s arguments, the Court concludes that the Report and Recommendation [Doc. No. 39] should be, and is, adopted. Plaintiff’s motions for default judgment are DENIED.

IT IS SO ORDERED this 17th day of March, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE